

**CLEARWATER HOUSE**2187 ATLANTIC STREET
STAMFORD, CT 06902

Tel: 203-425-4100

Fax: 203-425-4105

June 14, 1995

FEDERAL EXPRESS

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Ms. Regina Keeney
Chief, Wireless Telecommunications Bureau
Federal Communications Commission
Room 5002
2025 M Street, N.W.
Washington, DC 20554

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JUN 16 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARYRe: PP Docket No. 93-253, Competitive Bidding Procedures

Dear Ms. Keeney:

I write to convey my thoughts with respect to the status of the designated entity ("DE") Entrepreneurs' Block PCS auction post-*Adarand*. My view is that the Commission should eliminate the race and gender-based distinctions in their entirety, have disparate treatment of applicants/licensees be based solely on small business size standards, and re-write the DE rules to reflect these changes through an accelerated formal rulemaking proceeding structured so that the C-block auction is delayed not more than 90 days.

National Telecom ("NatTel") is a minority-owned small business which I founded on June 30, 1994, the day after I was present in the 8th floor public meeting room at the Commission when the historic DE rules were issued on June 29th. Although the extent of my enthusiasm for the DE rules was such that I immediately quit my former profession, founded NatTel, and have been doing nothing since that time except raising money, building a wireless telecommunications organization, and preparing for the auction; I will admit that I had some doubts from time to time whether the race and gender-based distinctions would ultimately survive a legal challenge.

Let's face facts and be realistic. As much as we would all like to perform various legal contortions to figure out a way to maintain the race and gender distinctions in the DE rules, *Adarand* ends that possibility because there is no way that such distinctions will withstand a strict scrutiny test. And deep down we all know it, so let's not deceive ourselves with false hopes. Both the Commission and DEs would be best served by forgetting about the race and gender distinctions, and get on with the deal by replacing the race/gender standard with a new small business standard.

The "Entrepreneurs' Block" is not a "Minority" Block or a "Woman" Block. It's for entrepreneurs. Small businesses which have historically not been able to compete in the telecommunications industry alongside the billion-dollar behemoths. If we truly believe that, then it should be irrelevant whether the entrepreneur is a minority, a woman or a white male. Creating diversity among the wireless service providers of tomorrow means having small, entrepreneurial businesses providing service alongside AT&T and WirelessCo as much as it means having more minorities and women involved in the industry playing primary roles.

As things stand today, it is extremely difficult for DEs to raise capital in the financial community.¹ The last thing we need is another *TEC* or *Adarand*-induced stay of the C-block auction based on the existence of the race and gender-based distinctions. If the financial community believes that the C-block auction will not conclude by the end of this year, I fear that what scarce pre-auction financing that is available for DEs will evaporate entirely, since by then the "time to market" issue with the MTA winners will be overwhelming.²

As such, I suggest the following structure which will cause the least disruption to the Commission's existing DE rules:

<u>Status</u>	<u>Bidding Credit</u>	<u>Installment Plan</u>
Start-up Business (less than \$5 MM revenues)	25%	Interest only for 6 years; rate equal to 10-year Treasury Note.
Small Business (\$5 MM - less than \$40 MM revenues)	15%	Interest only for 3 years; rate equal to 10-year Treasury Note.
Middle Market Business (\$40 MM - \$125 MM revenues)	10%	Interest only for 2 years; rate equal to 10-year Treasury Note plus 2.5%.

In addition, by eliminating the affiliation and attribution rule exceptions for minorities and women, the Commission will ensure that only true "entrepreneurial" businesses, regardless of the race or gender of their owners, will be allowed to participate in the auction.

¹ Based on my research, any DE which brings \$20 million to the auction will rank in the Top 10, and perhaps even the Top 5.

² I have publicly opposed recent efforts to delay the licensing of the MTA winners, since the time to market delay (pre-*Adarand*) was estimated to be only 9-12 months. See, *PCS Week*, vol. 6, no. 18, p. 2 (May 17, 1995). However, if another judicial stay of the C-block auction occurs and pushes the auction into 1996, then the time to market issue will be devastating.

Since there is no doubt that there will be many suggestions on how to amend the DE rules, I believe that any attempt by the Commission to do so without a formal rulemaking proceeding will be fraught with peril. If the Commission changes the rules on its own motion without any notice to the public and an opportunity to be heard by parties in interest, our attorneys tell us that yet another judicial stay would be likely, sending us all back to a *TEC*-style quagmire.

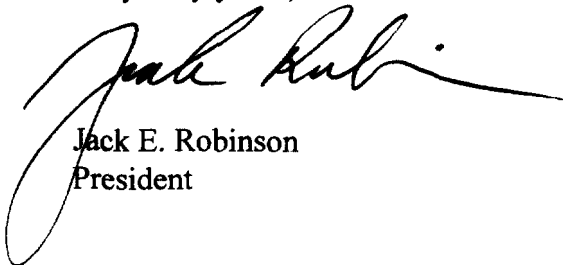
A formal rulemaking proceeding can be accomplished in an expedited manner. For example, the rule modifications can be issued by July 14th, comments can be required by July 21st, replies by July 28th, and the final rules can be issued by August 4th. The Commission should then give DEs the remainder of the Summer to analyze the rules and **educate** the financial community as well as their investors (since absolutely nothing happens in August in the financial community anyway). Short-forms would then be due September 28th, up-front payments due October 18th, and the auction would commence November 1st. And once the auction begins, it can end before Christmas if the Commission gets really aggressive with respect to its various bidding procedures (activity rules, rounds, stages, etc.), over which the Commission clearly has unfettered control.

Unless there is something that I am missing, I fail to see anything magical about August 2nd. Yet I fear that any attempt to shortcut formal rulemaking merely in order to drop a gavel on August 2nd will result in the entire process being delayed yet again in the Court of Appeals.

To paraphrase General Longstreet at Gettysburg, I truly believe that DEs and the financial community have enough ammunition (and energy) for "one more good fight -- but just one." Another judicial delay, I am convinced, will be terminal to our cause and the financial community will focus instead on providing second-stage financing to the MTA winners.³

Let's have a true "Entrepreneurs' Block" auction for entrepreneurs regardless of race, color or sex.

Very truly yours,



Jack E. Robinson
President

³ The vast majority of the venture capital community has already made this decision.

CERTIFICATE OF SERVICE

I, Jack E. Robinson, hereby certify that on this 14th day of June, 1995, a copy of the foregoing was served by either Federal Express (FE), or first-class mail postage prepaid (mail), on the following parties:

Honorable Reed C. Hundt (FE)
Chairman
Federal Communications Commission
Room 814
1919 M Street, NW
Washington, DC 20554

Honorable James H. Quello (FE)
Commissioner
Federal Communications Commission
Room 808
1919 M Street, NW
Washington, DC 20554

Honorable Andrew C. Barrett (FE)
Commissioner
Federal Communications Commission
Room 826
1919 M Street, NW
Washington, DC 20554

Honorable Rachelle B. Chong (FE)
Commissioner
Federal Communications Commission
Room 844
1919 M Street, NW
Washington, DC 20554

Honorable Susan Ness (FE)
Commissioner
Federal Communications Commission
Room 832
1919 M Street, NW
Washington, DC 20554

William F. Caton (mail)
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, NW
Washington, DC 20554

Jackie Chorney (FE)
Wireless Telecommunications Bureau
Federal Communications Commission
Room 5002
2025 M Street, NW
Washington, DC 20554

William E. Kennard, Esq. (FE)
General Counsel
Federal Communications Commission
Room 614
1919 M Street, NW
Washington, DC 20554

Donald H. Gips (FE)
Office of Plans & Policy
Federal Communications Commission
Room 822
1919 M Street, NW
Washington, DC 20554

Jay D. Markley (FE)
Wireless Telecommunications Bureau
Federal Communications Commission
Room 5002
2025 M Street, NW
Washington, DC 20554

Andrew E. Sinwell (FE)
Office of Plans & Policy
Federal Communications Commission
Room 822
1919 M Street, NW
Washington, DC 20554

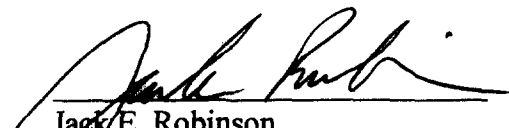
Patricia D. Dennis, Esq. (mail)
Sullivan & Cromwell
1701 Pennsylvania Avenue, NW
Washington, DC 20006

David A. LaFuria, Esq. (mail)
Lukas, McGowan, Nace & Gutierrez
1111 19th Street, NW, Suite 1200
Washington, DC 20036

Theodore D. Frank, Esq. (mail)
Arent, Fox, Kintner Plotkin & Kahn
1050 Connecticut Avenue, NW
Washington, DC 20036

Dean R. Brenner, Esq. (mail)
Crispin & Brenner
901 15th Street, NW, Suite 440
Washington, DC 20005

Andrew D. Lipman, Esq. (mail)
Swidler & Berlin
3000 K Street, NW, Suite 300
Washington, DC 20007


Jack E. Robinson